

EXHIBIT 3

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 Civil Case No. 17-CV-02393

- - - - -x

4 CIERA WASHINGTON,

Plaintiff,

5 -against-

6 WALGREENS; WALGREENS CO.; DUANE READE;
DUANE READE INC.; DUANE READE
INTERNATIONAL, LLC; and Individually and
7 Jointly; LUIS GUERRERO; GERMAINE ALLEN;
VIVIAN GHOBRIAL; and CRYSTAL BECKRUM,

8 Defendants.

- - - - -x

9
10 1250 Broadway
New York, New York
February 13, 2018
11 10:25 a.m.

12
13 PORTIONS CONFIDENTIAL,
ATTORNEYS' EYES ONLY

14
15 DEPOSITION of VIVIAN GHOBRIAL, one of
16 the Defendants in the above-entitled
17 action, held at the above time and place,
18 taken before Brian Brenner, a Shorthand
19 Reporter and Notary Public of the State of
20 New York, pursuant to the Federal Rules of
21 Civil Procedure, Court Order and
22 stipulations between Counsel.
23
24
25

1 V. GHOBRIAL

2 and I need for her to contact benefits and
3 provide the supporting documents for her
4 injury. I explained, you know, so we will
5 have on record just in case -- we didn't
6 want her to get hit with any bills or
7 whatever because this was a Workers' Comp
8 case, so her best bet is to contact
9 benefits.

10 Q Because it's a Workers' Comp
11 case?

12 A It would be a Workers' Comp
13 case. According to her she had injuries
14 from the robbery, and she was going to
15 hospitals and doctors and stuff, so I said
16 it would be a Workers' Comp case. It's
17 just you need to contact benefits in order
18 for you to discuss your options with
19 benefits, and she said she would. That
20 was it.

21 Q So before you were saying that
22 you were contacting Plaintiff -- you were
23 communicating with Plaintiff because you
24 were trying to get Plaintiff to submit
25 documentation to benefits to support that

1 V. GHOBRIAL

2 she was on medical leave, but now you seem
3 to be talking about that you spoke with
4 Plaintiff for her benefit so that she
5 could make sure to get Workers' Comp
6 payments?

7 A It's the same conversation.
8 It's pretty much proceeding to say, you
9 know, because -- she said -- according to
10 her she went to the hospital and she's
11 seeking medical benefits. I said it's to
12 your benefit to contact the benefit
13 department so you don't get hit with any
14 bills so we can have a case for her case.

15 Q At that time did Plaintiff have
16 medical benefits as an employee of the
17 company?

18 A I didn't check, but again I told
19 her to discuss her options with benefits
20 department.

21 Q What was your position at the
22 company? When I say the company you know
23 I mean Walgreens and Duane Reade, right?

24 A Yes.

25 Q What was your position at the

1 V. GHOBRIAL

2 conducting an investigation, and it
3 involved a few people and Ciera Washington
4 as part of it.

5 Q Understood. So before Plaintiff
6 was robbed in December you never saw a
7 video with respect to Plaintiff being
8 involved in price modification, right?

9 A Correct.

10 Q And before Plaintiff was robbed
11 in December you never saw any
12 documentation or any other information
13 related to Plaintiff allegedly being part
14 of a price modification; is that correct?

15 A Correct.

16 Q Now, when you say there's a
17 request to fire Plaintiff, you were saying
18 part of the procedure is that someone
19 makes a request to fire an employee. Then
20 you look into that, right?

21 A Correct.

22 Q What form is that request to
23 fire in? Is it paper, e-mail, virtual, in
24 person, verbal? What is it?

25 A Depending on the case.

1 V. GHOBRIAL

2 MR. WARSHAW: Objection to
3 form.

4 Q To price modify the items for
5 her?

6 MR. WARSHAW: Objection to
7 form.

8 Q Against policy?

9 A His statement.

10 Q Gregory Spear said that?

11 A No, but his statement admitting
12 that he conducted it for her, and for her
13 to accept it and for her to hand him \$20,
14 that means she knowingly knew he was price
15 modifying for her. She knew that he was
16 going to price modify for her.

17 Q Let's break that down. You said
18 Gregory Spear saying he's price modifying
19 this for Plaintiff. Is that what you're
20 saying?

21 A He admitted to price modifying
22 the items for several employees. One of
23 them was Ms. Washington.

24 Q Did he ever say that Ciera
25 Washington asked him to do it?

1 V. GHOBRIAL

2 failed to come back from their leave.

3 Q Understood, but is that the same
4 -- does that apply to Plaintiff's case as
5 well?

6 A Yes.

7 Q So you said you make the
8 determination -- you made the
9 determination to fire Plaintiff, right?

10 A Correct.

11 Q Was there a request made for her
12 firing?

13 A Just for loss prevention, not
14 for medical.

15 Q My question is simple: Yes or
16 no, was there a request to fire Plaintiff?

17 A From loss prevention, yes, there
18 was a request to fire the Plaintiff for
19 theft.

20 Q And when did that request come
21 in?

22 A I am not sure of the exact date.

23 Q Do you know what month?

24 A Not sure.

25 Q Was it after Plaintiff was

1 V. GHOBRIAL

2 robbed?

3 A Correct.

4 Q How long after Plaintiff was
5 robbed was there a request to fire
6 Plaintiff from loss prevention?

7 A I am not sure.

8 Q One week?

9 A Not sure.

10 Q Two weeks?

11 A Not sure.

12 Q Three weeks?

13 A I am not sure.

14 Q Four weeks?

15 A Same answer, I am not sure.

16 Q Do you know if it was before
17 Christmas?

18 A I believe sometime in January.
19 I am not sure.

20 Q January 2016?

21 A January 2016.

22 Q Just trying to get the record
23 straight. There was no request to fire
24 Plaintiff before January 2016?

25 A I am not sure.

1 V. GHOBRIAL

2 training as a shift leader? Yes.

3 Q And do you know that as part of
4 Ms. Washington's training as a shift
5 leader she was taught that she has to know
6 as part of her job the price of every
7 single item at any given time regardless
8 of if it's ever on sale, discounted,
9 whatever?

10 MR. WARSHAW: Objection to the
11 form.

12 A No.

13 Q You said that Plaintiff stole --

14 MS. MORRISON: Strike that.

15 Q You said that Plaintiff rang up
16 the items, right?

17 A No.

18 MR. WARSHAW: Objection to the
19 form.

20 Q So you know that Plaintiff
21 didn't ring up the items, right?

22 A Correct.

23 Q What, if anything, gave you the
24 indication that Plaintiff told Gregory
25 Spear to ring up the items?

1 V. GHOBRIAL

2 MR. WARSHAW: Objection to
3 form.

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5 her?

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15 modifying for her. She knew that he was
16 going to price modify for her.

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18 Gregory Spear saying he's price modifying
19 this for Plaintiff. Is that what you're
20 saying?

21 A He admitted to price modifying
22 the items for several employees. One of
23 them was Ms. Washington.

24 Q Did he ever say that Ciera
25 Washington asked him to do it?

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2 A No.

3 Q Did anyone ever say that Ciera
4 Washington asked him to do it?

5 A Not that I know of.

6 Q Did you read anything that said
7 Ciera Washington asked Gregory Spear to
8 price modify these items for her?

9 A No.

10 Q Did anything in the tape show
11 you that Ciera Washington said -- by the
12 way, was the tape you reviewed -- did it
13 have any audio?

14 A No.

15 Q It was just video?

16 A Correct.

17 Q So you didn't hear anything
18 anyone said?

19 A Correct.

20 Q So did anything in the tape show
21 you that the Plaintiff said to Gregory
22 Spear "price modify these items for me"?

23 A No.

24 Q Any other indication that --

25 MS. MORRISON: Strike that.

1 V. GHOBRIAL

2 A No.

3 Q Did anyone ever say that Ciera
4 Washington asked him to do it?

5 A Not that I know of.

6 Q Did you read anything that said
7 Ciera Washington asked Gregory Spear to
8 price modify these items for her?

9 A No.

10 Q Did anything in the tape show
11 you that Ciera Washington said -- by the
12 way, was the tape you reviewed -- did it
13 have any audio?

14 A No.

15 Q It was just video?

16 A Correct.

17 Q So you didn't hear anything
18 anyone said?

19 A Correct.

20 Q So did anything in the tape show
21 you that the Plaintiff said to Gregory
22 Spear "price modify these items for me"?

23 A No.

24 Q Any other indication that --

25 MS. MORRISON: Strike that.

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2 Q Every time you leave the store,
3 you say?

4 A Correct.

5 Q And because the Plaintiff -- and
6 is that policy? You said it's in the
7 handbook?

8 A Yes. To get a bag check and
9 coat check.

10 Q And because Ciera Washington
11 didn't get a bag check and because she
12 gave \$20 to Gregory Spear, that's the
13 entire reason for your support for saying
14 that Plaintiff wanted Gregory Spear to
15 price modify all those items for her?

16 MR. WARSHAW: Objection to the
17 form.

18 Q Is that what you're saying?

19 A It's various, the facts, but
20 those two facts were part of it too, yes.
21 She didn't follow company policy when it
22 comes to employee purchase. She didn't
23 follow company policy when it comes --
24 with regards to bag checks when she
25 leaves.

1 V. GHOBRIAL

2 Q Anything else?

3 A Instead of making a purchase off
4 the clock, not on the clock.

5 Q There's a policy that you can't
6 buy items as an employee when you are not
7 working?

8 A You are supposed to be off the
9 clock. Not on the clock when you purchase
10 items.

11 Q So there's a policy saying you
12 will be disciplined if you purchase an
13 item while you are working?

14 A Correct.

15 Q What else supported your
16 reasoning that Plaintiff stole items, as
17 you said?

18 A The fact that she selected items
19 that she knows is high-priced items, and
20 loss prevention asks for these items to be
21 locked due to being high-priced items --

22 Q Wait, stop. You said loss
23 prevention told her she should lock these
24 items, the price of these items in her
25 brain? Is that what you mean?

1 V. GHOBRIAL

2 they will be held accountable and it will
3 include up to and including termination.
4 I'm trying to find it for you.

5 Q Are you saying anywhere every
6 single bullet point, every single thing
7 within this employee handbook, if the
8 employee does it mean that they are
9 subject to discipline up to and including
10 termination?

11 A I am only saying when it comes
12 to violation of company policies and
13 rules. Not everything in bullet points in
14 here.

15 Q Understood, but now you pointed
16 to employee shopping at the end of
17 employee's shift. Does it say anything
18 there if you do not do this you violate
19 company policy?

20 A Again I am going to try to find
21 you where it says any violation of company
22 policies could lead to termination.

23 Q I understand, but I'm asking you
24 a different question. Please focus on my
25 question that I'm asking. I am asking you

1 V. GHOBRIAL

2 -- because you said there's something in
3 the handbook that says any violation of
4 company policy could subject you to
5 termination, right?

6 A Yes.

7 Q Is there anything in the
8 employee bullet point that says if you
9 don't follow this you are violating
10 company policy?

11 A Not right next to it --

12 Q Anywhere --

13 A -- like, in the same handbook.

14 Q You mean in the same handbook?

15 A In the same handbook that every
16 policy and procedure, fail to follow
17 company policy and procedure can lead to
18 up and including termination.

19 Q Understood, but is there
20 anything here in the bullet point that
21 indicates it includes this particular
22 bullet point?

23 A No handbook says right next to
24 each bullet point if "and you fail to do
25 so it will be termination, and if you fail

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2 to do so will be termination, and if you
3 fail to do so will be termination."

4 Q Understood, but my question to
5 you is different again.

6 MS. MORRISON: Please mark that
7 the witness is --

8 A No.

9 Q Okay, now you finally answered
10 it. So there's nothing here that says
11 while the employee is shopping, blah,
12 blah, blah, blah, and if you don't do this
13 you are violating a company policy?

14 MR. WARSHAW: Objection to
15 form.

16 Q Right?

17 A No. Unfortunately not every
18 bullet point, we don't have -- you will be
19 violating company policy.

20 Q There's nothing here? That's my
21 question.

22 A Right next to it, no. There's
23 nothing here --

24 Q But --

25 A There's --

1 V. GHOBRIAL

2 Q Hold on. Is there anything in
3 sum and substance near any of these bullet
4 points that you just pointed to at the top
5 of DR62 that say these are company
6 policies that if you violate -- these are
7 company policies, indicating that they
8 cannot be violated?

9 A I will find it for you, yes.

10 Q No. I'm saying, anything here
11 in these five bullet points?

12 A On this paper, no.

13 Q It says at the top heading
14 employee shopping, correct?

15 A Yes.

16 Q It doesn't say this is a policy
17 that you must follow or you could be
18 fired, right?

19 MR. WARSHAW: Objection to
20 form.

21 Q Right?

22 A Right.

23 Q Now, do you see above on DR161
24 lateness? Do you see that?

25 A I am sorry?

1 V. GHOBRIAL

2 their bag checked?

3 A I -- no.

4 MR. WARSHAW: Same objection.

5 Q Have you ever disciplined
6 anybody because they exited the store
7 without having their bag checked?

8 MR. WARSHAW: Same objection.

9 A No.

10 Q Any discipline of any kind?

11 MR. WARSHAW: Same objection.

12 A I don't discipline. I only get
13 requests for termination when it's final.
14 I get that, so managers, I'm sure, do
15 discipline people, or if there's an issue
16 like that -- I get the final end of it.

17 Q Understood. Thank you for
18 clarifying. Have you ever been involved
19 in or heard of someone being disciplined
20 because they left the store without having
21 their bag checked?

22 MR. WARSHAW: Objection to
23 form.

24 A Not sure.

25 Q Do you recall?

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2 MR. WARSHAW: Objection to
3 form.

4 A No.

5 Q You don't recall?

6 MR. WARSHAW: Objection to
7 form.

8 A No.

9 Q And we can go back to where we
10 are trying to find where in the employee
11 handbook it says that if you don't have
12 your bag or coat, belongings checked every
13 time you leave the store you will be
14 subject to discipline.

15 MR. WARSHAW: Objection to
16 form.

17 MS. MORRISON: While she is
18 looking, may I ask for the grounds for
19 the objection?

20 MR. WARSHAW: It's the same
21 objection. You told me not to make a
22 speaking objection, so it's an
23 objection to the form.

24 MS. MORRISON: No. According
25 to the rules, when you're actually

1 V. GHOBRIAL

2 other purported violations contained in
3 the employee handbook that you allege
4 Plaintiff violated, correct?

5 A Correct.

6 Q And there are no other
7 provisions in the employee handbook that
8 you relied on to suspend or fire Plaintiff
9 other than what you already testified to,
10 correct?

11 A Correct.

12 Q And then you --

13 MS. MORRISON: Just noting for
14 the record that we have to stop
15 quickly because defense counsel needs
16 to patch somebody in on the phone.

17 Is it okay to speak?

18 MR. WARSHAW: Go.

19 MS. MORRISON: The phone's
20 ringing but I'll ask a question.

21 Q You said the other written
22 policies you relied on to suspend and fire
23 Plaintiff were in modules, correct?

24 A Yes.

25 Q So let me hand you what was

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2 Exhibit 15 consists of documents Bates
3 stamped DR127 through, to, and including
4 DR140. Please, within Plaintiff's Exhibit
5 15, point to all the provisions that you
6 relied on to suspend and fire the
7 Plaintiff. Actually, before we begin on
8 that, though, I want to make sure it's
9 clear. You suspended Plaintiff for the
10 same reasons that you fired her, correct?

11 A Correct.

12 Q So we can talk about your
13 reasons for suspending and firing
14 Plaintiff jointly because they are the
15 exact same reasons?

16 A Correct.

17 Q When did you make the decision
18 to fire Plaintiff?

19 MR. WARSHAW: Objection.

20 A I believe February 22.

21 Q What year, 2016?

22 A Yes.

23 Q Right after Plaintiff -- the day
24 Plaintiff came back from medical leave?

25 A Right after her interview, loss

1 V. GHOBRIAL

2 prevention interview.

3 Q Understood, with Troy Hennessy?

4 A Yes.

5 Q And that was the date that
6 Plaintiff returned to work after medical
7 leave, right?

8 A Correct.

9 Q And when did you make the
10 decision to fire Plaintiff?

11 A February 23, I believe.

12 MR. WARSHAW: Objection to
13 form.

14 Q February 23, you believe?

15 A February 23, 2016.

16 Q You're sure about that?

17 A I think so, yes.

18 Q Is there possibly any other
19 date?

20 A No.

21 Q When were discussions about
22 suspending Plaintiff?

23 MR. WARSHAW: Objection to
24 form.

25 A After the interview, February

1 V. GHOBRIAL

2 A Yes.

3 Q The top e-mail says HR has
4 reviewed Ciera's paperwork and video
5 recording her suspension. Do you see
6 that?

7 A Yes.

8 Q And you wrote that, right?

9 A Yes.

10 Q So Plaintiff was already
11 suspended by the time this e-mail was
12 written, right?

13 A She was suspended on the 22nd.
14 Yes.

15 Q So she was suspended before this
16 e-mail that you said was dated February
17 23, correct?

18 A Correct.

19 Q And supports the decision to
20 terminate, right?

21 A Yes.

22 Q So the decision to terminate
23 also occurred before your e-mail about you
24 saying -- one that you say is February 23,
25 2016?